

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman; and
Mark Acton

Competitive Product Prices
Parcel Select Contract 6 (MC2013-13)
Negotiated Service Agreement

Docket No. CP2013-13

ORDER APPROVING AMENDMENT TO
PARCEL SELECT CONTRACT 6 NEGOTIATED SERVICE AGREEMENT

(Issued December 27, 2013)

I. INTRODUCTION

The Postal Service seeks to amend Parcel Select Contract 6.¹ For the reasons discussed below, the Commission approves the contract, as amended.

In Order No. 1538, the Commission approved Parcel Select Contract 6 (Existing Agreement).² On December 9, 2013, the Postal Service filed notice that it has agreed to an amendment to the Existing Agreement. On December 11, 2013, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public

¹ Notice of United States Postal Service of Amendment to Parcel Select Contract 6, with Portions Filed Under Seal, December 9, 2013 (Notice). The Amendment is Attachment A to the Notice (Amendment).

² See Docket Nos. MC2013-13 and CP2013-13, Order Adding Parcel Select Contract 6 to the Competitive Product List, November 8, 2012 (Order No. 1538).

Representative, and providing interested persons with an opportunity to comment.³ On December 18, 2013, the Commission issued Chairman's Information Request No. 1 to obtain the prices for contract year 2, as well as information on whether contract year 2 prices were adjusted pursuant to Existing Agreement section I.F.1 or I.F.2.⁴ The Postal Service filed its response on December 19, 2013.⁵

Amendment. The Amendment changes the methodology for pricing applicable to the second year of the contract, and it modifies the annual adjustment provision used to calculate prices for the third year of the contract. Notice, Attachment A at 1-2. The Postal Service asserts that the "supporting financial documentation and financial certification initially provided in this docket remain applicable." Notice at 1.

The Postal Service intends for the Amendment to become effective one business day after the Commission completes its review of the Notice. *Id.*

II. COMMENTS

Comments were filed by the Public Representative.⁶ No other interested person submitted comments. The Public Representative reviewed the Amendment, as well as the Existing Agreement as initially filed and the financial data filed under seal with the Postal Service's notice in Docket Nos. MC2013-13 and CP2013-13. PR Comments at 2. The Public Representative notes that the Postal Service did not provide an explanation or support for its assertion that the Amendment will not materially affect the contract's cost coverage. *Id.* at 2. However, the Public Representative states that the amended contract should continue to cover costs. *Id.*

³ Order No. 1900, Notice and Order Concerning Amendment to Parcel Select Contract 6, December 11, 2013.

⁴ Chairman's Information Request No. 1, December 18, 2013 (CHIR No. 1).

⁵ Responses of the United States Postal Service to Chairman's Information Request No. 1, December 19, 2013 (Response to CHIR No. 1).

⁶ Public Representative Comments on Postal Service Amendment to Parcel Select Contract 6, December 18, 2013 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Response to CHIR No. 1 and the accompanying materials filed under seal, as well as the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that they meet applicable requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

The Postal Service states that the Amendment will not “materially affect the cost coverage” of the Existing Agreement and that “the supporting financial documentation and financial certification initially provided in this docket remain applicable.” Notice at 1.

The Existing Agreement established prices that would apply in the first contract year and provided annual adjustments for each of the two subsequent contract years. The Amendment modifies section I.E.5 of the Existing Agreement concerning the methodology for applying the prices available to the customer in contract year 2, and it revises section I.F of the Existing Agreement concerning the annual adjustment provision for contract year 3. Notice, Attachment A.

The Commission concludes that the Amendment does not materially affect the underlying financial analysis of the contract. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Notice requirements. In Response to CHIR No. 1, the Postal Service states that it adjusted prices for contract year 2 pursuant to section I.F.2 of the Existing Agreement.⁷ This provision allows the Postal Service to use its discretion when adjusting prices for subsequent contract years. *Id.*

⁷ Response to CHIR No. 1, question 2. See also Docket Nos. MC2013-13 and CP2013-13, Request of the United States Postal Service to Add Parcel Select Contract 6 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data, October 25, 2012, Attachment B at 4 (Request).

The Commission recently clarified that, pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5, the Postal Service must provide notice of rate adjustments made pursuant to provisions such as section I.F.2, at least 15 days prior to the effective date of the rates.⁸ In Order Nos. 1840 and 1841, the Commission noted that if prices proposed for subsequent contract years are discretionary by the Postal Service, *i.e.*, they are not based on a pre-determined formula that is tied to objective, external events, the Postal Service must file the prices with the Commission at least 15 days prior to their effective date.⁹

Parcel Select Contract 6 has a three-year term. Order No. 1538 at 5. The second contract year began November 1, 2013. The Postal Service filed notice of the Amendment on December 9, 2013. Notice at 1. Notice of the prices for contract year 2 was not provided until December 19, 2013. See Response to CHIR No. 1. Thus, the Postal Service has not complied with the 15-day notification requirement outlined in 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5. Consequently, the Commission approves the prices filed for contract year 2 prospectively, effective with the issuance of this Order. The Commission directs the Postal Service to adhere to the 15-day notification requirement when it adjusts prices for any contract that has a similar provision.

Other considerations. The Postal Service states that the Amendment shall become effective one business day after the Commission completes its review.

⁸ See Docket No. CP2012-40, Order Approving Amendment to Parcel Select Contract 3 Negotiated Service Agreement, September 27, 2013 (Order No. 1840). See also Docket No. CP2012-41, Order Approving Amendment to Parcel Select Contract 4 Negotiated Service Agreement, September 27, 2013 (Order No. 1841).

⁹ The Commission also clarified that if a contract's terms provide for a rate adjustment to be made according to a pre-determined schedule (*e.g.*, at the beginning of a contract year or at the end of every quarter) and a pre-determined formula that is based on objective, external factors, (*e.g.*, changed annually based on the average change in prices of general applicability for that product), the Commission would not require subsequent rate change filings with respect to that contract. See Order Nos. 1840 and 1841 at 3-5.

Within 30 days of the termination of the Existing Agreement, as amended, the Postal Service shall file the annual (by contract year) costs, volumes, and revenues disaggregated by rate category and weight associated with the contract.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Existing Agreement, as amended, is approved and is effective immediately.
2. As set forth in the body of this Order, rates under the Amendment are effective immediately.
3. Within 30 days after the Existing Agreement, as amended, terminates, the Postal Service shall file the annual (by contract year) costs, volumes, and revenues disaggregated by rate category and weight associated with the contract.
4. As discussed in the body of this Order, changes in rates pursuant to a negotiated service agreement that are not made according to a pre-determined schedule and a pre-determined formula based on objective, external factors must be filed with the Commission at least 15 days prior to the effective date of such rates.

By the Commission.

Shoshana M. Grove
Secretary